IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

WP(C).No. 18994 of 2007()

AGAINST THE ORDER IN IA.882/2006 IN OPEP.256/2005 of I ADDL.DISTRICT COURT, ERNAKULAM

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PETITIONER:

C.V. JOY, S/O. VARKEY,
CHEMBISSERIYIL HOUSE, RACKAD KARA,VALAKOM VILLAGE,
MAKKEDAMBU P.O., MOOVATTUPUZHA.

BY ADV. SRI.WILSON URMESE
SRI.M.C.ANTONY

RESPONDENTS:

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1. **K.P. POULOSE, S/O. POULOSE,**
   KALIYAMMELIL HOUSE, KADATHI KARA,
   VELLOORKUNNAM VILLAGE, MUVATTUPUZHA.

2. **SREEDEVI ANDARJANAM,**
   D/O. KRISHNA ELAYATHU, ELAMPILLISSERY ILLAM,
   MEKKADAMBU KARA, VALAKOM VILLAGE,MEKKADEMBU P.O.,
   MUVATTUPUZHA.

BY ADV. SRI.M.V.JOY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE PETITION IN ELECTION O.P.NO.256/2005.**

EXT.P2: **COPY OF THE RECRIMINATION PETITION FILED BY THE PETITIONER IN ELECTION O.P.NO.256/2005.**

EXT.P3: **COPY OF THE ORDER OF THE COURT BELOW DTD. 28/08/2006 IN I.A.882/2006.**

/TRUE COPY/

P.A.TO JUDGE

KSS

M.N. KRISHNAN, J.

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W.P.C. NO. 18994 OF 2007

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Dated this the 4th day of December, 2007.

J U D G M E N T

This writ petition is preferred against the order of the 1st Addl. District Judge, Ernakulam in I.A.882/06 in Election O.P. 256/05. It is a petition filed under Order 99 of the Kerala Panchayat Raj Act that in case of rechecking the votes, the votes cast by persons described in the petition to be declared as void may be deleted from the total number of votes cast in favour of the original petitioner. In order to attract S.99 of the Kerala Panchayat Raj Act, the Section mandates as follows.

> "When in an election petition a declaration that any candidate other than the returned candidate has been duly elected is claimed, the returned candidate or any other party may give evidence to prove that the election of such candidate would have been void if he had been the returned candidate and a petition has been presented calling in question his election."

2. So what is required under the Section is if there are two prayers in an election petition, namely, to declare the election of the successful candidate as void and to further declare that another person is entitled to be declared as a successful candidate, then when such a declaration is claimed in order to protect the interest of the person who has succeeded in the election, he is given an opportunity to defend the same by contending that such a person cannot be declared for the reasons stated by him for which he can file a recrimination as contemplated under Section 99. So far as the present case is concerned there is no such prayer and the prayer is only with respect to setting aside the election of the successful candidate on the ground of double voting and therefore S.99 is not attracted and the Court below was right in holding that a recrimination petition cannot be filed by the petitioner in I.A.882/06. I do no find any mistake committed by the Court below and therefore the said order is confirmed and the writ petition is dismissed.

M.N. KRISHNAN, JUDGE.

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